Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

Saturday, February 12, 1955 Vol. CXIX. No. 7

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COUNTY BOROUGH OF DEWSBURY

Town Clerk's Department

APPLICATIONS are invited for the appointment of Assistant Solicitor. Salary scale £690 × £30—£900. Commencing salary to be fixed according to experience.

Last day for receipt of applications February 22, 1955.

Further particulars can be obtained from the undersigned.

A. NORMAN JAMES,
Town Clerk.

Town Hall,
Dewsbury.
February 1, 1955.

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Canvassing will disqualify.

H. BAILEY CHAPMAN,
Town Clerk.

Town Hall,
Burton upon Trent.
February 11, 1955.

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T. CRADDOCK,
Secretary to the Combined Probation Committee.

Law Courts,
Smethwick.

Justice of the Peace
and
LOCAL
GOVERNMENT REVIEW
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NOTES OF THE WEEK

Sittings of Juvenile Courts

In areas where there is not much work for the juvenile court it has sometimes been the practice for sittings to be arranged once a month. From a superficial point of view it would seem not worth while to ask two or three justices and various officials to attend for the purpose of disposing of a very short list of cases, and that it would be better to have a longer sitting at intervals of three or four weeks.

A little consideration reveals drawbacks in such a system, and in a circular calling attention to the new Juvenile Courts (Constitution) Rules, 1954 (S.I. No. 1711 (L.21)) the Home Office invites juvenile court justices to consider arrangements for more frequent sittings.

It is pointed out that where the court sits once a month and a summons is issued shortly before a sitting it is sometimes made returnable for the next later sitting, in order that inquiries may be completed before the hearing. The result may be that five or six weeks elapse between the summons and the child's first appearance in court.

The Secretary of State asks justices in areas in which the juvenile court does not sit frequently to consider the need to review the arrangements for their sittings, with a view to ensuring that juvenile offenders are dealt with promptly. If court proceedings are delayed, says the circular, the memory of the occurrence that occasioned them may often have little connexion in the child's mind with the steps that are being taken. More frequent sittings may cause some inconvenience and loss of time for the justices, but we are confident that their interest in the work and their desire to obtain the best possible results will outweigh considerations of personal convenience, and that sittings will be arranged, even at short notice, whenever there are cases to be heard and delay is undesirable.

The circular emphasizes the importance of full background inquiries to assist the court in deciding on treatment, and the desirability of remanding a juvenile, after the case has been proved, for this purpose. Justices are reminded that valuable reports may be obtained from a remand home after a period of observation.

Accessory After the Fact

Accessories in the commission of summary offences are dealt with under s. 35 of the Magistrates' Courts Act, 1952, in which the material words are "aids, abets, counsels or procures." An accessory to an indictable offence may be indicted, tried and punished as if he were the principal offender, by virtue of the provisions of ss. 1 and 8 of the Accessories and Abettors Act, 1861. The summary trial of aiders and abettors in the commission of certain indictable offences is provided for in s. 19 and para. 19 of sch. 1, Magistrates' Courts Act.

The position of an accessory after the fact is quite different. He is not a participant in the crime, and unless the crime be a felony an accessory after the fact does not commit any criminal offence.

In the case of a felony, an accessory after the fact is one who after its commission and with knowledge that the felon has committed it, receives, relieves, comforts, or assists the felon. He is liable, generally, to imprisonment, for not exceeding two years, Accessories and Abettors Act, 1861, s. 4. There is no provision for the summary trial of an adult charged as an accessory after the fact. If, as sometimes happens, a person is charged before a magistrates' court with a substantive felony and the evidence discloses a case of being an accessory after the fact, the correct course is to commit the accused for trial on indictment.

A Question of Appeal

We recently heard of a case in which a probationer, fined in respect of a breach of a requirement in the probation order,

wished to appeal to quarter sessions. The point then arose: is there a right of appeal?

The question is really whether the fine is upon conviction and whether the fine is a sentence within the meaning of s. 83 of the Magistrates' Courts Act, 1952. It is provided by s. 6 (3) of the Criminal Justice Act, 1948, that a probationer who has failed to comply with a requirement in the probation order may be fined a sum not exceeding £10, without prejudice to the continuance in force of the probation order. This is obviously not a sentence for the original offence, but is an alternative to such a sentence.

Section 6 (5) provides that such a fine shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by a conviction. The fact that it is deemed to be a sum adjudged to be paid by a conviction seems to imply that it is not adjudged by a conviction, and that what is intended is that the various enactments relating to enforcement, including time to pay and the issue of warrants, are to apply.

If therefore the fine is not upon conviction there would appear to be no conviction or sentence against which there is a right of appeal. There is no reference to an order, and if there were it would be necessary for a right of appeal against the order to be specifically conferred. Our conclusion therefore is that there is no right of appeal to quarter sessions in respect of a fine imposed under s. 6 (5) of the Criminal Justice Act, 1948, but that if notice of appeal were served the question would be left to the appeal committee of quarter sessions to decide.

Goods or Burden of any Description

We have seen a report in the press of a case in which justices dismissed a charge of exceeding the speed limit brought against a defendant who was driving a van containing two boxes of electrical equipment which was used for testing transformers.

The report is a short one. The vehicle is stated to have been a 15 *cwt.* van and it was alleged to have been driven at between 45 and 50 miles per hour in an unrestricted area. In it were the two boxes containing electrical equipment, a tool-chest, and suitcases containing personal effects.

The defendant admitted that he was driving at over 30 miles per hour, but it was contended on his behalf that he was not carrying goods. He was stated to be an employee of a firm which had a fleet of vans used for carrying equipment for testing transformers, and it was submitted that if it was ruled that these vans were goods vehicles it would result in a breakdown in the firm's service.

This last consideration seems to us to be an irrelevant one. The first schedule to the Road Traffic Act, 1930, as substituted by the 1934 Act, classifies vehicles broadly as " passenger vehicles," that is to say vehicles constructed solely for the carriage of passengers and their effects, and " goods vehicles," that is to say vehicles constructed or adapted for use for the conveyance of goods or burden of any description. It is always dangerous to comment without full knowledge, but the description of this vehicle as a 15 *cwt.* van seems rather to preclude its coming within the definition of a passenger vehicle, and if this is so then it must have been a goods vehicle, and the remaining question was whether, at the time of the alleged offence, it was carrying goods or burden of any description. In this connexion the case of *Clarke* v. *Cherry* [1953] 1 All E.R. 267 is of interest. Following the line of argument accepted by the court in that case, that the buckets, washing leathers and ladders of a window cleaner are goods within the definition it appears difficult to see why the equipment for testing transformers carried in the van which we are concerned with should be other than goods within the meaning of the definition.

However, the justices decided otherwise, and so far as we are aware the matter is not likely, at least on this occasion, to be tested by appeal to the High Court. A point which is not mentioned and about which we are unable, therefore, to speak is whether the van had, or should have had, a C licence on the ground that it was being used by the owners of it on a road for the purpose of carrying goods in connexion with a business (or trade) carried on by them.

Deterrent Punishment

Nobody denies that one object of punishment is deterrence. It is hoped that the offender himself will be deterred from offending again, and also that others who might be contemplating the commission of similar offences will refrain when they reflect upon the possible consequences to themselves. That some potential offenders are deterred in this way is certain, but to what extent it is impossible to ascertain. Probably a number who are considering the commission of a crime that involves planning and preparation may weigh the reward against the possibility of punishment, but many crimes are committed under the influence of some sudden emotion or temptation such as to exclude the thoughts of the consequences. On the whole, however, public opinion demands that the value of the deterrent element should not be ignored, and it is sometimes necessary to inflict punishment when the court would much like to spare the offender. The problem for the court is then difficult and its solution may be adopted with regret. The court would like to consider the welfare of the offender if it could, just as it does and must in the case of juveniles.

In a recent prosecution at the Reading quarter sessions, a middle-aged woman of good character was accused of attempting to obtain money from an insurance company by means of false pretences with intent to defraud, the allegation being that she had staged a bogus robbery. She was found guilty and sentenced to five months' imprisonment. A probation officer had asked that the woman should be put on probation, and said that unless the defendant had an opportunity to get back to normal life at once she would not have the heart to struggle.

The learned recorder, when passing sentence, described the case as very tragic. He could not help having some sympathy with the defendant, but the case was much more serious than an ordinary case of false pretences. In this country, he went on, insurance depended on the complete honesty of the assured. Prison might not do the defendant much good, but if she were put on probation people would open their newspapers and see that someone had got away with this easy fraud. There was no such easy fraud to commit, and others would be tempted.

Probation Officers' Reports

In this case it appears that the probation officer was given an opportunity of making a report to the court and of expressing her opinion. That a report from a probation officer may be of assistance to a court in determining the most suitable method of dealing with an offender is recognized by s. 43 of the Criminal Justice Act, 1948, as it was earlier recognized in the case of juvenile courts by rules of procedure. That most courts are availing themselves increasingly of the services of probation officers by receiving social reports from them is a matter for satisfaction. As has been said on a number of occasions, the report

is intended to furnish the court with all relevant information about the offender and his circumstances, so that the court knows as much as possible about the offender as well as about the offence. The result is certainly not always to lead to the making of a probation order : it may indeed convince the court of the need of some drastic or lengthy punishment or treatment. Naturally, a probation officer tends to think of what is good for the offender, and if he is invited or permitted to make a recommendation he will regard the reform and rehabilitation of the offender as of the first importance. No one will complain of such an attitude in a social worker. It remains for the court to decide between what may sometimes be the conflicting interests of the offender and of the rest of the community.

Quorum

One of our contemporaries raises the question whether the decision in *Re Hartley Baird, Ltd.* [1954] 3 All E.R. 695 affects local government procedure. In that case a vote taken at a company meeting was held to be effective, despite the absence of the quorum required by the articles of association, but the point was that the articles provided that " no business shall be transacted . . . unless a quorum is present when the meeting proceeds to business." We suppose these last six words refer to the stage at which the meeting starts considering items in the agenda which may involve decisions, as distinct from formal matters such as apologies for absence. This article agrees with table A (art. 53) of the Companies Act, 1948, which was based upon a long line of company precedents, but it seems a remarkably unbusinesslike and inept provision. As was pointed out by the Lord President in *Henderson* v. *Louttit & Co., Ltd.* (1894) 31 Sc. L.T. 555 it would mean that decisions of the greatest moment to the company could be arrived at in the latter part of a meeting, after the greater number of those who had constituted the quorum at the outset had gone home. Our contemporary half suggests that it might be a good thing if standing orders of local authorities were framed in such a way as to permit this, so that a council's officials would be relieved of the duty of restraining reluctant members from departing. It is fortunate (and if the last mentioned suggestion were generally favoured, it would be doubly fortunate) that the matter does not, for local authorities themselves, depend on standing orders but on statute. Schedule III to the Local Government Act, 1933, provides a maximum quorum in r. 4 in part III for district councils, and a minimum in each of the other parts, for other councils. But for all local authorities alike it provides that no business shall be transacted at a meeting of the council unless the quorum prescribed by the Act is present. For committees, the council can fix a quorum at its pleasure, and the model standing orders suggest a minimum of three with a maximum of one-quarter of the whole committee, with the same requirement as the Act makes for the council, that the quorum must be present when the business is transacted.

There is an argument just possible, even on this phrase : does it mean " when a decision is reached," or must the quorum be present all the time that discussion is proceeding ? In our opinion, the latter is what the schedule means. We do not suggest that the High Court would be alert, in the exercise of any of its discretionary powers, to upset a decision of a local authority if the decision were challenged by a person adversely affected who was able to prove that at some point of the discussion the attendance had fallen below the quorum, unless it were also proved that a quorum had been lacking when the vote was taken. But Parliament has (we think) shown more respect for the nominal purposes of deliberative government, when laying down rules for local authorities, than it shows in its own processes. It has not contemplated debates carried on by a handful of members, with reserves in refreshment rooms and other purlieus, waiting to make up a quorum if a count be called.

Local government business, at any rate, it seems to have intended should be businesslike.

Measures against " Smog "

The recent statement by the Minister of Housing and Local Government (Mr. Duncan Sandys) about the Government's intentions as to measures against air-pollution will be hailed with relief by the public as an indication of active steps to be taken against this dangerous and havoc-wreaking phenomenon.

The Report of the Beaver Committee on Air Pollution (Comd. No. 9322) has now been digested by the Queen's advisers.

" Smog " (" smoke, grit, dust and noxious gases " to the committee) produced by houses and industrial plant causes damage to property and other harmful effects costing £250 million a year (the price of 12 large aircraft carriers or more than half the total cost of the National Health Service !).

To this figure must be added the value of the heat wasted through excessive smoke which is assessed by the committee at between £25 million and £50 million a year. Besides this loss to the national income there is as well the injury to health and loss of life caused by these noxious elements. It will be remembered, too, that 4,000 lives were lost following the " smog " periods in London, two years ago.

The committee have now come forward with a series of proposals the effect of which, in their opinion, would reduce the density of smoke in the atmosphere by as much as 80 *per cent.* over a 10 or 15 year period.

Their main suggestions are as follows :

(1) That subject to certain exceptions the emission of dark smoke should be illegal.

(2) That industries, when installing new plant, should be required to take all practical steps to prevent the emission of grit and dust.

(3) That subject to ministerial confirmation, local authorities should be empowered to designate " smokeless zones " and " smoke control areas."

(4) That inspection and enforcement should be left to local authorities except for certain industrial premises which should be supervised by Government Inspectors.

(5) That house-holders in smoke restricted districts should be required to burn only smokeless fuel and that the cost of converting domestic fireplaces for this purpose should be met largely through exchequer grants or local authority funds.

These are radical proposals indeed, but radical decisions are necessary to meet the challenge of the gritty conditions bred from the Industrial Revolution and doing increasing damage today to our health, agriculture and property.

The Government have decided in principle to adopt the Report of the Beaver Committee and we must all hope that their inquiries with local authorities, the Federation of British Industry and the Ministry of Fuel and Power (who have to find the necessary smokeless fuels) will proceed expeditiously to an effective conclusion and that we shall see the last of this disagreeable menace.

Action on this decision brooks no delay.

JUMPING ON BUSES

Queries reaching us since the autumn of last year show some misunderstanding of the effect of a decision by Mr. Paul Bennett at Marlborough Street, which was reported in *The Times* of August 31, 1954. First, the facts. A would-be passenger boarded an omnibus of the London Transport Executive when halted by traffic lights in Tottenham Court Road, some 50 *yds.* short of its next regular point for picking up. The conductor ordered (or asked) him to get off, and he refused. The conductor called a constable, and the man was charged before Mr. Bennett with the 13th offence in s. 54 of the Metropolitan Police Act, 1839, *viz.*, using in a thoroughfare or public place threatening, abusive, or insulting words or behaviour, with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned. This charge, often stated wrongly in the newspapers, is the well-known stand-by of the metropolitan police, when a person gives them trouble and cannot be accused of some more specific contravention of the law. The section does not extend beyond the metropolitan police district; there may be similar provisions in local Acts in parallel terms, but it was not until the enactment of s. 5 of the Public Order Act, 1936, which is in force throughout the country, that Parliament included an offence of the same type (in almost the same words) in the general statute law. As everybody knows, the Act of 1936 was passed for quite other purposes, and no case has yet occurred from which the profession can foretell what attitude the Divisional Court would take if the section were used to punish a passenger who boarded an omnibus at a point where the conductor told him not to do so.

We spoke at 118 J.P.N. 600 of the merits of prohibiting this conduct, which in the jargon of today is at least unsocial, in such circumstances as those of the London case, but, we suggested, venial at other times and places.

Upon the legal aspect, counsel prosecuting for the London Transport Executive could not point to any legal prohibition of that conduct, and relied upon an argument at common law. This was that the omnibus was, except at its regular points for picking up, no more open and available for boarding than a private car halted at the traffic lights: the driver of the private car would be entitled to eject as a trespasser a person who jumped into the halted car, and the conductor of the omnibus was in the same position. (There was some reference to regulations of the Minister of Transport, either under s. 10 of the London Passenger Transport Act, 1924, or under war-time powers, but it was common ground that these, like byelaws outside the London traffic area made under s. 75 of the Public Health Act, 1925, would not apply upon the facts.)

Upon the case as argued, Mr. Bennett held that a would-be passenger was not debarred by statute, or by any provision in other legislation enforceable at the place where the alleged offence occurred, from mounting the omnibus when in fact it was standing still, and that the alleged analogy with a private car was not sustainable.

With this conclusion on the law (as distinct from the merits: *see* above) we respectfully agree. It is necessary to look back at the law as it stood before the Road Traffic Act, 1930, and it seems to us to be of the nature of a "stage carriage" as defined in the Metropolitan Public Carriage Act, 1869, that it is available to any person who desires to enter it, when it is in fact standing in the street.

Section 4 of the London Cab and Stage Carriage Act, 1907, gave authority for restricting stopping places, but (as we read it) that section was aimed solely at the driver and conductor and did not impose any restriction upon passengers. Nor do we find in the very complex legislation now in force any restriction upon passengers, which would have availed the prosecution in the case we are considering. On this view of the law, and not being referred by counsel to any contrary provision, Mr. Bennett held that the would-be passenger was seeking to exercise a legal right of travel, and it was, therefore, not his behaviour which (if any) was threatening, abusive, or insulting, when he refused to comply with the conductor's request (or " order ") to alight.

It must be said, however (and the main purpose of this article is to make it clear), that the legal position would not always be the same elsewhere. The latest enactment governing omnibuses of the London Transport Executive is s.18 of the Transport Act, 1953. Those vehicles are subject to a code of law different from that governing the vehicles of other owners in the London traffic area or in the metropolitan police district, and are only in part, and in some cases, affected by the Road Traffic Act, 1930, which (as amended) contains the chief provision to be considered in the provinces. Since the queries we have been receiving come from provincial areas, we proceed to look at the general law.

Section 72 of the Act of 1930 empowers the licensing authority for public service vehicles to attach to a road service licence a condition for securing that passengers shall not be taken up (or shall not be set down) except at specified points or shall not be taken up (or shall not be set down) between specified points. Section 84 empowers the Minister of Transport and Civil Aviation to make regulations as to the conduct of passengers in public service vehicles, which are enforceable by a fine not exceeding £5, and by removal from the vehicle by the driver or conductor or a constable. Those regulations forbid a passenger to enter or remain in a public service vehicle when requested not to do so by the conductor or other employee of the licensee, on the ground that the vehicle is already full, or that the operator is debarred from taking up passengers at the place in question by reason of the conditions attached to the road service licence: Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Regulations, 1936: S.R. & O. 1936, No. 619; reg. 9). Regulation 12 implements the power given by s. 84 (1) of the Act, entitling the driver or conductor or a constable to remove a person who boards the vehicle in contravention of reg. 9.

So far, then, as concerns inadvertent stops for traffic made by a public service vehicle, between points at which alone it may take up passengers in accordance with its licence, the position in the provinces is covered, and there would be no necessity to pray in aid so general (and historically so inappropriate) an enactment as s. 6 of the Public Order Act, 1936.

When a public service vehicle is being operated with a licence not containing a condition in the foregoing sense (or on a part of its route to which the condition has not been applied), we are inclined to think that the conductor can not refuse a passenger who enters, while the vehicle is standing in the street, so long as there is room for him, even though the effect of admitting him will be to defeat persons waiting at a recognized queuing place further on the route.

This seems to follow from considering the nature of the stage carriage, the type of public service vehicle in question, the type which was called an omnibus in earlier law, and is popularly called an omnibus or bus today. The Town Police Clauses Act, 1889, made omnibuses subject to many of the provisions about hackney carriages in the Town Police Clauses Act, 1847. It

excluded s. 53 of the Act of 1847, which obliges a cabman to accept a passenger when the cab is standing in the street, but the whole tenor of the Acts is that an omnibus was regarded by Parliament as a species of hackney vehicle—a vehicle open, as its name implied, to all would-be passengers, not at all analogous (as counsel sought to establish in Mr. Bennett's London case) to a private carriage that could not lawfully be entered against its owner's wish. In s. 6 of the Act of 1889, the councils of borough and urban districts were empowered to make byelaws fixing stands for omnibuses and the points at which omnibuses might stop for longer than was necessary to take up or set down passengers desirous of entering or leaving the same. They might, therefore, stop anywhere for this purpose, as in fact they did in many towns in living memory, and it seems likely that, if the point had ever arisen, the courts would have held the driver bound to stop on being made aware that a passenger desired to alight. To keep him in the moving vehicle against his will would have been actionable. Whilst there was nothing in the Act of 1889 to compel a driver to stop an omnibus when hailed (just as s. 53 of the Act of 1847 did not, and does not, compel the driver of a moving cab to stop when hailed), we think it was assumed by Parliament that when an omnibus was in fact standing still a passenger might lawfully enter if there was a vacant seat: not otherwise, because the admission of more passengers than could be given seats was forbidden by a much older statute, s. 13 of the Railway Passenger Duty Act, 1842. When it changed the system of licensing for motor omnibuses (the Act of 1889 still applies to others) and gave them a new name, Parliament did not, we think, alter the nature of the relation between the owner, his servants, and the travelling public. It follows, therefore, that what Mr. Bennett said in London is equally sound law outside; except in the cases to which regs. 9 (iv) and 12 of the above-cited regulations of 1936 apply, the conductor cannot lawfully prevent a passenger from boarding a bus standing in the street.

There may be a case for some further regulation, in the interests of safety or of the regular flow of traffic, but, if so, we have not been told of it, and, as we said at p. 600 last year, our preference on present information is for leaving well alone.

VISITING FORCES

By R. KENNETH COOKE, O.B.E., *Solicitor, Clerk to the Prescot and St. Helens' (County) Petty Sessional Divisions*

A member of the United States Air Force to whom the Visiting Forces Act, 1952, now applies by virtue of the Visiting Forces Act, 1952 (Commencement) Order, 1954, and the Visiting Forces (Designation) Order, 1954, came before the Prescot magistrates a few days after the Act came into force on June 12, 1954.

The offence was that of being in charge of a motor vehicle on a road when under the influence of drink or drug to such an extent as to be incapable of having proper control of the vehicle, contrary to s. 15, Road Traffic Act, 1930.

The accused appeared in person, and the prosecution applied for summary trial under s. 18 (1) of the Magistrates' Courts Act, 1952.

The magistrates were minded to grant this application at once without going through the machinery of s. 18 (3), and the accused was accordingly offered the right of trial given to him by s. 25, Magistrates' Courts Act, 1952.

He first inquired the maximum penalty of the magistrates' court and of quarter sessions respectively. This is an eminently sensible but rarely asked question, and occasioned some hasty reference to *Stone*, as the careful clerk will mark his own court list and that of the magistrates with their maximum penalties, but usually does not bother his head with the powers of quarter sessions.

After some reflexion the accused " guessed he would have it checked through here " which was interpreted as an allied request for summary trial, and being duly granted, he was invited to plead to the charge.

His plea occasioned some difficulty, as this careful airman first inquired " if a guy is in charge of his car if he is fast asleep and the darned thing has broke down ? "

After considering the advice offered to him he " reckoned he'd better plead no, and have the whole details gone through and proven."

A plea of not guilty was entered.

The evidence was that a man and his wife were standing at the side of the Liverpool Road, when they saw the accused, who was dressed in civilian clothing described as " a loud check shirt hanging outside his trousers, and slate blue slacks like them Yanks wear," stumble down the steps of a nearby licensed house and walk towards an American type saloon motor car, bumping into a lamp standard *en route*, fall into the front seat of the car, and drive away in an erratic manner.

The witness, very properly apprehensive of the likely consequences of such a driver upon the roads, telephoned to the police.

A search of the area by police officers found the accused asleep, slumped over the driving wheel of the car, which was parked in a side road on the outskirts of Liverpool. The vehicle would not start, and this was subsequently found to be due to a choked petrol feed.

The accused was arrested and taken to the police station, where he was seen by the police surgeon, who had no difficulty in coming to the conclusion that he was unfit to be in charge of a car through drink. The accused declined the services of his own doctor or " medico," as these gentlemen are apparently called in America.

Section 5 (2) Visiting Forces Act, 1952, provides that where a person has been taken into custody by a constable without a warrant, and there is reasonable ground for believing that in accordance with s. 2 of that Act, he is subject to the jurisdiction of the service courts of a country to which the section applies, then, with a view to it being determined whether he is to be dealt with under the United Kingdom law, or by the courts of that country for an offence under the law thereof, he may be detained in custody for a period not exceeding three days without being brought before a court of summary jurisdiction. If within that period he is not delivered into custody of that country he must be released on bail, or brought before a court of summary jurisdiction as soon as practicable after the expiration of that period.

This interesting section is a startling departure from that otherwise universal safeguard of the liberties of the individual that a person taken into custody without warrant, and retained in custody, *i.e.*, not granted so called police bail, shall be brought before a magistrates' court " as soon as practicable." (Section 38 (4) of the Magistrates' Courts Act, 1952.)

In practice this phrase is always interpreted as meaning within 24 hours, not counting Sunday, Good Friday and Christmas Day.

The police, however, rather than detain the accused for a longer period, kept him in custody for some hours until the effects of the drink had worn off, and he was then charged with the offence and bailed to appear at the same police station on a later date, to enable the necessary inquiries to be made in the meanwhile. This is a procedure provided by s. 38 (2), Magistrates' Court Act, 1952.

The accused duly surrendered and was bailed again to appear before the magistrates' court.

At the hearing, the accused declined to give evidence, or call witnesses, but made a statement not on oath to the magistrates.

He was convicted of the offence, fined £20 plus £6 1*s*. witness expenses, the conviction was ordered to be endorsed upon his driving licence, and he was disqualified for 12 months.

Complications did not cease then. When asked by the clerk if he required time to pay, the accused inquired what the fine and costs came to in dollars !

As the clerk had neither a knowledge of the appropriate rate of exchange, nor the mathematical ability to carry out a rapid conversion calculation, he played rather a shabby trick upon the probation officer, by asking him to advise the accused !

Subsequently, a rather harassed probation officer informed the court that the accused would like one month to pay and this was granted.

The real interest in these proceedings lies in the question of concurrent jurisdiction, and the section of the Visiting Forces Act, 1952, conferring the right to offer that most unusual plea before a magistrates' court, a plea in bar of trial.

Under s. 2 (1) of the Visiting Forces Act, 1952, the service courts and service authorities of a country to which the section applies may within the United Kingdom, or on board any of Her Majesty's ships or aircraft, exercise over persons subject to their jurisdiction in accordance with this section all such powers as are exercisable by them according to the law of that country.

At present the section applies to the countries of Canada, Australia, New Zealand, the Union of South Africa, India, Pakistan, Ceylon, Belgium, France, the Netherlands, Norway and the United States of America.

Section 2 (2) provides that the following persons of these countries are subject to the jurisdiction of their service courts here :

(*a*) a member of a visiting force, and

(*b*) any other person who, being neither a citizen of the United Kingdom and Colonies nor ordinarily resident in the United Kingdom, is for the time being subject to the service law of that country otherwise than as a member of a visiting force.

There is a system of certificates for proof of these matters in the Act.

It should be specially noted that s. 2 (1) does not exclude the jurisdiction of the United Kingdom courts in respect of offences against our law.

In fact there is concurrent jurisdiction in respect of matters which are offences against both the law of the United Kingdom and the law of the sending country.

Where such concurrent jurisdiction exists the question at once arises which court shall have the primary right to jurisdiction ?

Section 3 (1) of the Act, deals with this conflict by removing from the jurisdiction of the United Kingdom courts any offence committed by a member of a visiting force or of a civilian component of such a force which falls within one of the following categories :

1. the alleged offence, if committed by him, arose out of and in the course of his duty as a member of that force or civilian component, as the case may be, or

2. the alleged offence is an offence against the person, and the person, or if more than one, each of the persons in relation to whom it is alleged to have been committed, had at the time a relevant association either with that force, or with another visiting force of the same country, or

3. the alleged offence is an offence against property and the whole of the property in relation to which it is alleged to have been committed (or, in a case where different parts of that property were differently owned, each part of the property) was at the time thereof the property either of the sending country or of an authority of that country or of a person having such an association as foresaid.

For this purpose a member of a civilian component of a visiting force is defined by s. 10 (1) of the Act as a person fulfilling the following conditions :

(*a*) that he holds a passport issued in respect of him by a Government, not being a passport issued by the authorities of the United Kingdom or any Colony,

(*b*) that the passport contains an uncancelled entry made by or on behalf of the sending country stating that he is a member of a civilian component of a visiting force of that country, and

(*c*) that the passport contains a note of recognition of that entry by or on behalf of the Secretary of State which has not been cancelled, and as respects which no notification in writing has been given by or on behalf of the Secretary of State to the appropriate authority of the sending country stating that the recognition is withdrawn.

Section 12 (2) of the Act defines a person having a relevant association with a visiting force as,

(*a*) a member of a visiting force or a member of a civilian component of that force, or

(*b*) a person, not being a citizen of the United Kingdom and Colonies, or ordinarily resident in the United Kingdom, but being a dependant of a member of that visiting force or of a civilian component of that force.

A dependant of a member of a visiting force, or of a civilian component of that force is,

1. the husband or wife of that person, and

2. any other person wholly or mainly maintained by him or in his custody charge or care.

The fact that an offence arose out of and in the course of duty may be proved by certificate from the appropriate authorities of the sending country, but this certificate is not conclusive, as s. 11 (4) specifically lays down that such a certificate shall be sufficient evidence unless the contrary is proved.

It must be emphasized that s. 3 (1) only arises in cases of concurrent jurisdiction, hence a member of a civilian component is not removed from the jurisdiction of the United Kingdom courts unless the case is one which can be dealt with under the law of the sending country. This can be proved by certificate which is conclusive (s. 11 (3)).

Further, as s. 3 (1) specifically refers to a member of a visiting force, or a member of a civilian component of such a force, the dependants are not caught by the section, even though the particular law of the sending country may legislate for them.

The sending country may waive its right to primary jurisdiction in those cases where the jurisdiction of the United Kingdom courts would otherwise be ousted by the operation of s. 3 (1), and s. 3 (3) (*a*) provides that the Director of Public Prosecutions may certify that the sending country has notified him that it is not intended to deal with the accused under the law of that country.

It is clear that in those cases where a member of a visiting force or civilian component thereof is brought before the United Kingdom courts ouster of jurisdiction under s. 3 (1) must be raised by the accused as a plea in bar of trial. It is not a matter for the prosecution to prove the negative that this section does not apply, as paras. (*b*) and (*c*) of subs. 3 (3) lay down that nothing in s. 3 (1) shall affect a trial before a United Kingdom court either during or after the proceedings, unless, in the course of the trial, objection is made that by reason of the circumstances set out in s. 3 (1) the court is not competent to deal with the case.

Finally, s. 4 provides that where a person has been tried by a service court under s. 2 (1) he shall not be tried for the same offence by the United Kingdom courts, and where a person who has been convicted by a service court is convicted by a United Kingdom court for a different crime, but it appears that the service court conviction was wholly or partly in respect of acts or omissions in respect of which he is convicted by the United Kingdom court, that court shall have regard to the sentence of the service court.

The Visiting Forces Act, 1952, is of growing importance, particularly in those petty sessional divisions which lie near to the large stations and units of visiting forces in this country.

ALDERMEN

[CONTRIBUTED]

The annual meetings of county councils and of borough councils in April and May next will involve the triennial election of Aldermen, who have been described as the " undemocratic " element in such councils.

Aldermen are descended from the Anglo-Saxon ealderman, meaning the chief or elder man, a title applied originally to high ranking personages including the earls or territorial magnates. The ealderman, we are told, presided in the shire court along with the bishop, the one taking cognizance of civil and the other of spiritual matters. The officer presiding at the lesser hundred court was also called ealderman, which title came in time to be associated with the heads of guilds; later, when the guilds became identified with the municipal body, the magistrates of the several wards were called aldermen. Their functions before the Municipal Corporations Act, 1835, were dependent on and differed with the borough charter. According to Trevelyan "the old English word 'alderman' and the word 'mayor' imported from France reflect the dual origin of the liberties of the mediaeval English town." The Act of 1835 provided that aldermen should continue to be members of borough councils and for their election by the councillors, with the result that what was originally a magisterial title became a local government office. The old system is, however, perpetuated in the City of London where the twenty-six aldermen, twenty-five elected for life by the freemen of the wards and the remaining one appointed by the aldermen themselves, constitute a Court of Aldermen. The city has no commission of the peace, and each alderman is, by virtue of his office, a magistrate possessing, when sitting at the justice rooms of the Mansion House and the Guildhall, the powers of a court of summary jurisdiction. Last summer the office attracted more than usual publicity when Mr. Percy Thomas Lovely, a Lloyd's underwriter who had been nominated alderman for the ward of Cheap, was rejected by the Court of Aldermen after a private meeting, and subsequently withdrew as a candidate. On that occasion the *Justice of the Peace and Local Government Review*, pointing out that a City of London alderman was *ex officio* a magistrate, the only alderman and only judicial person chosen in this country by popular vote, expressed the view that it was not out of place in such circumstances for a right of veto to belong to the aldermen already on the bench.

Neither the municipal nor the county aldermen, who hold office for six years instead of for life, are *ex officio* justices, and their election is not subject to veto by the aldermanic bench. Whilst the Lord Mayor of London is selected from among the aldermen and must, therefore, be an alderman, neither a provincial lord mayor or mayor nor a chairman of a county council must necessarily be an alderman. There is no rule that an alderman must be a councillor before he is elected alderman, although in practice this usually happens. Inasmuch as the municipal alderman is returning officer at the election of councillors for his ward, and liable under the Representation of the People Act, 1949, to a fine not exceeding £100 on summary conviction for any act or omission in breach of his official duty, his office is more onerous than that of his county counterpart.

Following the resumption of local elections in 1945, aldermanic troubles produced some criticism of the law and election of aldermen. Demands ranged from the outright abolition of the office to the election of aldermen by popular ballot, and from re-election as alderman by the electors on the same day as the election of councillors, to election by councillors on a secret ballot. The Local Government (Miscellaneous Provisions) Act, 1953, introduced a revised procedure of declaring the result of aldermanic elections which, whilst it avoids the tedious process of reading all the voting papers, preserves the open nature of the election. The person presiding at the meeting is now to ascertain the votes given to each person and declare the result, but the minutes of the meeting must include the full names, residences, and descriptions of the persons to whom votes were given, and the names of the persons by whom the votes were given. According to a newspaper report, there was embarrassment in a northern county council over the first aldermanic election under the new procedure, where the successful candidate, after being congratulated by certain members who emphasized how much they had done to further his success, subsequently learned from the published minutes that they had, in fact, voted against him. The suggestion that it did not make for good blood, for members to know who had voted for and who had voted against them, seems strangely at variance with the long established statutory requirements for an open election.

The election of aldermen is not without its technicalities and pitfalls, particularly where party feeling runs high or where, in an age of mechanized party politics, the result of an election is dependent on the exercise of a casting vote. The latter, although abolished in favour of lot in the case of parliamentary and local government elections, can still determine an aldermanic election, where the Local Government Act, 1933, provides that in the case of an equality of votes the person presiding at the meeting, whether or not entitled to a vote in the first instance, shall have a casting vote. Indeed if, in the event of an equality of votes, no casting vote is given, the election will wholly fail and an order of the High Court under s. 72 of the Local Government Act, 1933, will be necessary for the holding of another election. Aldermen as such are not entitled to vote at the

election of aldermen, but the mayor, even although he is an alderman, can give both an original vote (provided he is not a candidate) and, in the event of an equality of votes, a casting vote (*Burdon* v. *Barron* [1939] 2 All E.R. 525; 103 J.P. 225), which casting vote can, seemingly, be given without actually signing a voting paper. The ordinary election of aldermen is to be held at the annual council meeting immediately after the election of the mayor, and if the statutory order is not observed is likely to result in a nullity (*R.* v. *M'Gowan* (1840) 4 J.P. 700) to cure which an application to the High Court would be necessary. On the other hand, the annual meeting can apparently be adjourned in accordance with standing orders. No nomination process is required at an aldermanic election, there being (*see* Branson, J., in *Fordham* v. *Webber* (1925) 89 J.P. at p. 182) no nomination at all. This rule, taken in conjunction with the common law rule that a candidate cannot act as returning officer at an election at which he is a candidate, can produce difficulties where votes in an aldermanic election are likely to be cast for the mayor or chairman. In *Fordham* v. *Webber*, the chairman of a county council declared himself to have been elected a county alderman which election stood, as the petitioner (for whom a vote as county alderman was cast) was held not to have been a candidate at the election and not, therefore, a person qualified to bring the petition. Notwithstanding *Fordham* v. *Webber*, and having regard to s. 113 of the Representation of the People Act, 1949, where a petition questioning a local election may be presented by four or more persons who voted or had a right to vote at the election, the preferable course seems to be for the mayor or chairman to vacate the chair if he knows himself to be a person for whom votes will be given, or otherwise as soon as an examination of the papers shows this to be the case.

Further judicial decisions have approved the collection of voting papers by the town clerk (*Baxter* v. *Spencer* (1895) 59 J.P. 376) and emphasized the necessity for the strict observance of what are now the revised statutory requirements, failing which it might happen that the election, like that in *In re Barnes Corporation*: *ex parte Hutter* (1933) 97 J.P. 76 (where, however, the circumstances cannot now be repeated) could be held to be no election at all.

It seems, although the position may not be altogether free from doubt, that an alderman who is elected as a councillor vacates office as an alderman without the necessity of resignation when he makes his declaration of acceptance of office as a councillor. In view of the doubt (*Pritchard* v. *Bangor Corporation* (1888) 52 J.P. 564) a specific resignation is frequently advised.

Many councils have accepted conventions or "gentlemen's agreements" governing aldermanic elections based usually on party politics or, alternatively, dependent on seniority in length of service. Examples of the former are "spoils to the victors" or election of aldermen on nomination by parties in proportion to their numerical strength of councillors. On the seniority principle, the senior councillor, irrespective of party, is elected alderman, either for a single term or automatically re-elected as a matter of course whilst he is capable of serving or willing to serve. A variant to this practice of "once an alderman always an alderman," is for a retiring alderman to be required to seek re-election as a councillor as a preliminary to his being reappointed alderman for a further term. Whatever convention or practice is followed, however, the actual and formal election of aldermen must be carried out in accordance with the method laid down by statute, a council not being entitled (*In re Barnes*, *supra*) to substitute another method of election of its own devising.

At their conference in 1954, the Rural District Councils Association agreed to press for the creation of an office of rural aldermen, and suggestions have been made from time to time that councils might be enabled to recognize and acknowledge past services by conferring *causa honoris*, but at a lesser level than the honorary freedom, the title of "alderman emeritus." The title and the office of alderman, therefore, whilst they link the present with the past, are not without a modern standing, honour, and tradition. K.H.C.

ADMINISTRATIVE STAFF COLLEGE

By W. D. PARTRIDGE

In May of last year I was privileged to be one of the first two local government officers to attend under the auspices of the Local Authorities' Joint Admissions Scheme a course of studies at the Administrative Staff College at Greenlands, Henley-on-Thames, and I have been asked to give my impressions of what proved to be one of the most hard-working but nevertheless most rewarding three months of my local government career.

It is difficult to assess on paper the precise benefits either to oneself or to one's authority, resulting from the course, which by its very nature is a course of "intangibles" rather than "techniques." I would however stress that quite apart from actual knowledge gained from one's studies at the College there is no doubt that the opportunity to get away from the pressures and problems of office routine, and to live and work with a group of 60 individuals holding a wide variety of senior appointments in the realms of industry, commerce, and government, cannot do other than result in the broadening of one's outlook, and it was the exchange of experiences and ideas arising from the many discussions both official and unofficial which I found to be of the greatest value.

The method of study is to divide the members of the College into syndicates of 10, each member acting in turn as chairman or secretary for syndicate discussions which are based on the experience of the members, information obtained from experts visiting the College, and the wealth of reading material available in the College library, each chairman being responsible for allocating selected reading amongst the members of his syndicate. A syndicate report is produced on each subject for subsequent presentation by the chairman, who is required to address the College in support of his report, which is then the subject of general discussion. As each report is some two or three thousand words in length, and with several members of the syndicate probably having different views on the subject itself or on the contents of the report, it will be appreciated that discussion on preliminary drafts often waxed fast and furious. Moreover as the whole course is geared to a very strict timetable it was not unusual for a chairman to be calling an emergency syndicate meeting at 10 *p.m.* to thrash out the final terms of a report which had to be in the hands of the typists by the following morning.

The course of studies consists of five main divisions, beginning with a study of comparative administrative structures, during which each member is called upon to explain to his syndicate with the aid of a blackboard the administrative structure of his own organization. This in itself proved to be a severe test, not only of knowledge of the organization and working of one's own authority but also of ability to explain the local government system to a critical audience anxious to draw comparisons with organizations with which they were more familiar, such as a company, a bank, or a government department.

In Part II of the course were studied the types of internal administrative problems which arise within any single organization including for example management of the individual, inter-relation of departments, and delegation, control, and accountability. Then in Part III attention was turned to external relationships not only as between one administrative unit and another within the commercial world but also relationships with organized labour and with central and local government. In this last named subject the local authority members were at least able to shed a little light on what appeared to be a rather dark subject so far as many other members were concerned, and at this stage of the course one really felt there was much wisdom in the principle of selection of members, whereby they are chosen not only for the benefits which they can derive from the course but equally for the knowledge and experience which they can contribute to it.

Part IV gave opportunity to consider the interaction of the numerous problems already discussed and the methods whereby the various sections of an organization may be kept alert and vital, and under the heading of "Conclusions" in Part V a survey of the work of the whole course was undertaken, as bearing upon the role and responsibilities of those who must occupy the senior administrative positions in their own types of organization.

In addition to the main subjects of the course, particular mention should be made of an excellent series of talks on The Use of Figures in Administration and a masterly exposition given in four lectures by the Principal, Mr. Noel F. Hall, on the Economic Background to the Internal and External Policies of the United Kingdom. As a special subject towards the end of the course, Commonwealth Economic Development was studied and provided one of the highlights of the whole session, when the Chancellor of the Exchequer honoured the College with a visit and gave a stimulating up-to-the-minute survey of this vital subject.

Each syndicate had the opportunity to consider and report upon the career and achievements of two individuals eminent in administration, and from time to time during the session visits were made by syndicate representatives to various outside organizations. These ranged from the Ford Motor Company's works at Dagenham to a sitting of the Industrial Disputes Tribunal, and included opportunity for those not familiar with local authorities to visit the Surrey County Council, Coventry City Council, and Abingdon Borough Council, and to meet members and chief officers of those authorities, who gave every assistance in answering the spate of questions which were forthcoming concerning the functions and methods of their respective authorities.

Apart from three free week-ends during the session, the course at Greenlands is continuous and, with as many as six or more subjects under consideration at any one time, members work under real pressure. Mornings and evenings are the official "working hours," with afternoons usually available for individual reading and preparation of reports, leaving opportunity for exercise in such little time as remains available. In this latter connexion the situation of Greenlands (formerly the home of the first Viscount Hambleden) standing as it does on the bank of the Thames with facilities in its own grounds for tennis, squash, and other sports has made it a particularly happy choice for its present purpose. With the growing interest of local authorities in the aims and objects of the College, it is to be hoped that succeeding sessions will find an increasing number of local government nominees having the opportunity and privilege of playing their part in its work and activities.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Cassels, Lynskey, Byrne, Ashworth, JJ.)

R. *v.* MICHALSKI

December 20, 1954; January 31, 1955

Criminal Law—Receiving stolen property—Joint charge—Indictment—Amendment—Name of one prisoner struck out—Power to convict individual prisoner proved to have received whole or part of stolen property—Larceny Act, 1916 (6 *and* 7 *Geo.* 5, *c.* 50), *s.* 44 (5).

APPEAL against conviction.

The appellant Michalski was charged at Hampshire quarter sessions with one Mazurek on an indictment containing two counts, the first of which charged both prisoners with breaking and entering premises and larceny, and the second of which charged both with receiving stolen property. Both were acquitted on the first count, and the appellant alone was convicted on the second. Although the second count charged a joint receiving, the evidence led by the prosecution disclosed two separate receivings, it being proved that the goods were first in the possession of the appellant and then came into the possession of Mazurek. At the close of the case for the prosecution counsel for both prisoners moved to quash the second count on the ground that, since the evidence disclosed receivings by both prisoners severally, a count alleging a joint receiving was bad. The deputy-chairman directed that the name of Mazurek should be struck out of the second count, so leaving the charge one against the appellant only. He subsequently directed the jury, after they had returned a verdict of Not Guilty in respect of Mazurek on the first count, to return a verdict of Not Guilty in respect of him on the second count also.

Held, that the position was covered by s. 44 (5) of the Larceny Act, 1916, and that, if the jury were satisfied on the evidence that the appellant received the whole or part of the stolen property they were entitled, by virtue of that subsection, to return a verdict accordingly; that it was entirely irregular to strike out of an indictment the name of an accused person after he had been arraigned and put in charge of the jury, and that this could not be done under the guise of amendment, but that, although the course adopted was entirely irregular, it was one which had in no way affected or prejudiced the appellant, and there was, therefore, no ground for interfering with the conviction.

Counsel: *Eric Myers* for the appellant; *Sir Harry Hylton-Foster, Q.C.* (*S.-G.*), *Christmas Humphreys* and *Robert Hughes* for the Crown.

Solicitors: *Oswald Hanson & Smith; Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Cassels, Streatfeild and Slade, JJ.)

R. *v.* ROSSI

January 24, 1955

Criminal Law—Sentence—Corrective training—Report of Prison Commissioners—Date of birth and not merely age of prisoner to be stated—Criminal Justice Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 21 (4).

APPEAL against sentence.

The appellant pleaded guilty at Middlesex sessions to shopbreaking and larceny and was sentenced to three years' corrective training, convictions in December, 1939, and April, 1943, having been proved against him. Prosecuting counsel, relying on the report of the Prison Commissioners made under s. 21 (4) of the Criminal Justice Act, 1948, informed the court that the appellant was 31 years of age, though, in fact, he was 32. Had he been only 31, he would have been under 17 at the time of the earlier of the two previous convictions, and, under s. 21 (1) (*b*), the conviction could not have counted as a qualifying conviction for corrective training.

THE COURT, after reducing the sentence on the merits to one of 18 months' imprisonment, added that, where a report of the Prison Commissioners states that a prisoner is eligible either for corrective training or preventive detention, the date of the prisoner's birth and not merely a statement of his age should appear in the report.

Counsel: *J. Yahuda* for the appellant; *Cassel* for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal*; *Solicitor, Metropolitan Police.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Cassels and Streatfeild, JJ.)

COWLISHAW *v.* CHALKLEY

January 20, 1955

Case Stated—Contentions wrongly included—General practice to be followed.

CASE STATED by Middlesex justices.

At a court of summary jurisdiction for the Gore petty sessional division of Middlesex an information was preferred by the appellant, John Cowlishaw, a police officer, charging the respondent, Donald Edward Chalkley, with dangerous driving. The justices dismissed the information, and were asked by the appellant to state a Case. In the Case they included certain contentions on behalf of the appellant and the respondent, but at the hearing no contentions had been made by either side. The witnesses for the prosecution were called and cross-examined, and then the defending solicitor put his client in the box. As soon as he had taken the oath, the justices said that they were of opinion that no *prima facie* case had been made out and dismissed the information.

Held, that, as the Case had been improperly stated, it must be remitted with the direction that the information be re-heard before a different bench.

Per curiam: Where justices state a Case themselves or ask their clerk to state it, it should then be submitted to both sides before being finally settled. In a case of any complexity it should be left to the parties themselves to draft the Case and submit it to the justices for their approval.

Counsel: *Wrightson* for the appellant; *C. G. L. Du Cann* for the respondent.

Solicitors: *Solicitor, Metropolitan Police; Pierron & Morley.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MORRISSEY *v.* GALER

January 20, 1955

Local Government—Byelaw—Validity—Keeping of noisy animal—Statutory provision against keeping animal "in such a place or manner as to be prejudicial to health or a nuisance"—Public Health Act, 1936 (26 *Geo. 5 and 1 Edw. 8, c.* 49), *s.* 92 (1) (*b*).

CASE STATED by the appeal committee of West Kent quarter sessions.

On an information brought by the prosecutor, Walter Benedict Morrissey, at a court of summary jurisdiction, the defendant, James John Galer, was convicted of an offence against a byelaw made by the West Kent county council, which provided: "No person shall keep within any house, building, or premises any noisy animal which shall be or cause a serious nuisance to residents in the neighbourhood." The defendant appealed to quarter sessions, who were of opinion that the byelaw was bad, because its subject-matter had already been dealt with in s. 92 (1) (*b*) of the Public Health Act, 1936, which creates a statutory nuisance where "any animal [is] kept in such a place or manner as to be prejudicial to health or a nuisance." They, accordingly, allowed the appeal and quashed the conviction. The prosecutor appealed to the Divisional Court.

Held, that the byelaw dealt with a noisy animal, a different matter from that dealt with by s. 92 of the Act, which dealt with conditions under which an animal was kept which might create a nuisance. A noisy animal might be kept under the most sanitary conditions and yet be a nuisance under the byelaw. The byelaw was, therefore, good, and the case must be remitted to quarter sessions with a direction that their decision that it was *ultra vires* was wrong, and that they must hear the appeal.

Counsel: *Melford Stevenson, Q.C.*, *Clapham* and *Peter Gibbings* for the prosecutor; *Gage* for the defendant.

Solicitors: *Sharpe, Pritchard & Co.* for *R. P. Tunstall*, Maidstone; *Monckton, Son & Collis*, Maidstone.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 11.

A CURIOUS SITUATION AT POOLE

In November, 1954, a 24 year old man, employed as a male nurse, appeared before the Poole justices charged jointly with another, with larceny of a camera from an unattended motor vehicle, and also with malicious damage to the vehicle.

The accused consented to be tried summarily so far as the larceny was concerned and pleaded guilty to both charges.

The case was outlined by the prosecution, which read a complete confession the accused had made to the police after caution. The accused then read to the magistrates a long statement he had written himself in mitigation which in no way raised any suggestion of ambiguity in the plea. The magistrates then heard his record, and as a result committed him to the next quarter sessions for sentence on the larceny and sentenced him to two months' imprisonment on the wilful damage.

Whilst waiting for sentence, the prisoner wrote a letter to the police requesting that he be allowed to change his plea, and when the case came on for hearing at quarter sessions he made the application to the learned recorder, Mr. Malcolm McGougan. The argument advanced on his behalf was that it was in the discretion of a trial judge to allow any prisoner to change his plea between conviction and sentence. The cases of *R.* v. *West Kent Quarter Sessions, ex parte Files* (1951) 115 J.P. 522 and *R.* v. *Durham Quarter Sessions, ex parte Virgo* (1952) 116 J.P. 157, were discussed at length and after hearing the accused say on oath that he had been at least 10 minutes walk away from the motor vehicle before he knew that his friend had stolen the camera, the learned recorder remitted the case to the Poole magistrates to allow the defendant to make an application for leave to change his plea.

The next day the magistrates' court, which consisted of the same magistrates as the one that sent the accused for sentence, was asked by the defence to allow the accused to change his plea. The prosecution argued that the *Durham* case did not apply and that the learned recorder had had no power to remit the case to the justices and consequently they had no jurisdiction to entertain the application, and further contended that as the prisoner had pleaded guilty the magistrates' court was *functus officio* and the prisoner could plead *autrefois convict*. The case of *R.* v. *Campbell, ex parte Hoy* (1953) 117 J.P. 189 was then considered.

The justices came to the conclusion that they had jurisdiction to entertain the application, but after hearing counsel for the accused refused leave for the accused to change his plea, and once more committed him for sentence to the recorder, who was still sitting. The accused appeared before the recorder, who after hearing counsel in mitigation, sentenced him to two years' corrective training.

COMMENT

Mr. A. E. Tritschler, clerk to the Poole justices, to whom the writer is greatly indebted for this report, was faced with difficult legal problems when the learned recorder remitted the case to his justices to allow the defendant to make an application for leave to change his plea. It is a curious fact that in each of the last four years there have been important decisions which, although not on all fours with the case reported above, may nevertheless be said to provide guidance as to how the justices should act when faced with a situation such as arose in this case.

In 1951, in *R.* v. *West Kent Quarter Sessions, ex parte Files, supra*, the Divisional Court decided that where a man had pleaded guilty at a court of summary jurisdiction to a charge of dangerous driving, quarter sessions had no jurisdiction to entertain an appeal against conviction, the ground of appeal being that defendant had pleaded guilty owing to a mistake as he did not understand the nature or gravity of the offence.

It will be recalled that in that case, the prosecutor obtained leave to apply for a writ of prohibition to prohibit the appeal committee from hearing the appeal. Lord Goddard, C.J., who delivered the leading judgment, after pointing out that there was no doubt at all that the defendant had understood the nature of the charge, said:

"On the face it the proceedings before the court was a statement by the appellant that he pleaded guilty. In those circumstances, quarter sessions had no right to hear the appeal (against conviction) and they must be prohibited from entertaining it."

In the following year in *R.* v. *Durham Quarter Sessions, ex parte Virgo, supra*, Lord Goddard expressed the view that in using the words set out above the previous year, he had gone too far. It will be remembered that in the *Durham* case a man was charged before the magistrates with stealing a motor bicycle. He elected to be dealt with summarily and pleaded guilty. After the facts had been outlined by the prosecution the defendant, who was not represented, made a statement which was inconsistent with the plea of guilty. He did not ask that his plea should be altered and it was not altered, and he was sentenced to six months' imprisonment. When he appealed to quarter sessions against conviction objection was taken, following the decision referred to above, that defendant had no right to appeal against conviction but quarter sessions, being of opinion that the statement made by the defendant to the justices should have been interpreted and accepted as a plea of not guilty, remitted the case to the justices with an expression of opinion that a plea of not guilty should have been entered.

Application was made to the Divisional Court for an order of *certiorari* to quash the order of quarter sessions as having been made in excess of jurisdiction, and for an order of prohibition to prohibit quarter sessions from entertaining an appeal against conviction, but the Divisional Court refused both orders and the Lord Chief Justice expressed the view of the Court that quarter sessions were right in their view of the matter and that, as the defendant had never been tried on a plea of not guilty, they were entitled to treat the conviction as a nullity.

In 1953, in *R.* v. *Campbell, ex parte Hoy, supra*, the Divisional Court considered the action of Miss Sybil Campbell, the metropolitan magistrate at Tower Bridge magistrates' court who, after a woman had pleaded guilty to a charge under the Customs Consolidation Act, 1876, and had been sentenced by her to four months' imprisonment, granted an application made later the same day by a solicitor acting for the woman that the woman's plea be amended to a plea of not guilty, and directed that the case be heard by another magistrate. The Court held that the magistrate having determined the case by passing sentence was *functus officio* and had no power to permit the change of plea, and an order of prohibition was accordingly issued prohibiting Miss Campbell from further proceeding in the case otherwise than by signing a warrant of commitment.

Finally, in *R.* v. *McNally* reported at [1954] 2 All E.R. 372, the Court of Criminal Appeal expressed firm conclusions as to the position which arises when a defendant wishes to change his plea.

McNally pleaded guilty at Manchester Assizes to charges of warehouse breaking and larceny, and housebreaking and larceny. He had also pleaded guilty when before the magistrates. After another accused, with whom McNally had been indicted, and had pleaded not guilty, had been found guilty and sentenced, McNally was put up for sentence and then said he wanted to change his plea and plead not guilty. Jones, J., refused permission and sentenced him to seven years' imprisonment.

Before the Court of Criminal Appeal, counsel for McNally could state no grounds of substance why defendant had wished to change his plea, and Goddard, L.C.J., in the course of his judgment, said: "The question whether or not a plea can be withdrawn is entirely one for the learned judge, who is not bound to allow a plea to be withdrawn once it has been made. If the Court came to the conclusion that there was a question of mistake or misunderstanding, or that it would be desirable on any ground that the prisoner should be allowed to join issue, no doubt the Court would allow him to do so."

The Court went out of its way to stress that the procedure followed in *R.* v. *Blakemore* [1948] 33 Cr. App. Rep. 49, where Byrne, J., allowed a plea to be withdrawn after judgment ought *not* to be followed.

The writer understands that Mr. Tritschler who had some doubts as to whether there was power for the recorder to remit the case, and consequently as to whether his justices had jurisdiction to entertain the accused's application for leave to change his plea, decided to advise his court that as the recorder was a justice of the borough, it was possible to treat his adjournment to the bench as an adjournment from one justice to another, a proceeding which appeared to be analogous to the powers conferred by s. 98 (7) of the Magistrates' Courts Act, 1952. Mr. Tritschler was also somewhat troubled as to whether the justices were not *functus officio* on the ground that as the prisoner had pleaded guilty he could plead *autrefois convict*, and in fact the prosecution argued on these lines before the magistrates when the case came before them the second time. Mr. Tritschler, in the writer's opinion, was fully justified in feeling the doubts expressed above and acted wisely in the circumstances in arranging for the same magistrates who had sent the accused for sentence to constitute the court upon the second occasion and for the matter to be dealt with most expeditiously so that the accused could be sent back to the same quarter sessions for the reason that if in fact the recorder had no power to remit the case to the justices then the whole of the proceedings before the magistrates on the second occasion were a nullity, and the recorder, by having the case before him in the same sessions, would be in the same position as if he had not remitted the case to the justices at all. R.L.H.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

EXTENSION OF LEGAL AID

Mr. P. Bell (Bolton E.) asked the Attorney-General in the Commons if he would now make a statement on the policy of Her Majesty's Government with regard to extending the facilities of the Legal Aid and Advice Act, 1949, to the local courts in which legal aid might be given in accordance with Part I of the First Schedule to that Act.

The Attorney-General replied that it was the intention of the Lord Chancellor to make an Order extending the provisions of the Act to those courts at the same time as he made his order to extend the Act to the county courts.

DRIVING CONVICTIONS

In reply to Mr. B. Janner (Leicester N.W.), the Secretary of State for the Home Department, Major Lloyd George, gave the following details of convictions during the years 1950-53 in England and Wales under ss. 11 and 12 of the Road Traffic Act, 1930:

	1950	1951	1952	1953
Section 11 (Reckless and dangerous driving)	2,908	3,552	3,576	3,787
Section 12 (Careless driving)	20,251	22,862	23,201	25,141

POLICE CONVICTIONS

Major Lloyd George stated in another written answer that during the 12 months ended September 30, 1954, 49 members of police forces in England and Wales were convicted of offences. For the 12 months ended September 30, 1950, 1951, 1952 and 1953, the numbers were, respectively, 31, 33, 38 and 42.

COURT ACCOMMODATION, DAGENHAM

Mr. J. Parker (Dagenham) asked the Secretary of State what progress had been made with the proposal to establish a separate court for Dagenham.

Major Lloyd George replied that the primary responsibility for initiating any changes in the Essex petty sessional boundaries and for providing new court accommodation rested with the county magistrates' courts committee. He understood that the committee had no immediate intention of submitting proposals to him on either subject.

PRISON WELFARE OFFICERS

Major Lloyd George told a questioner that he is taking action on the recommendation of the Committee on Discharged Prisoners' Aid Societies for the appointment of prison welfare officers at local prisons.

After considering the views of local Aid Societies, he has authorized the Prison Commissioners, in consultation with the National Association of Discharged Prisoners' Aid Societies, to initiate an experimental pilot scheme during the coming financial year. This will provide for the appointment of prison welfare officers, as recommended by the Committee, at three or four selected local prisons at which the local Aid Society would welcome such an appointment.

Major Lloyd George states that in 1953-54 Government grants totalling £22,108 were paid to the National Association of Discharged Prisoners' Aid Societies and its affiliated societies. Under the revised scheme of grants proposed by the Committee on Discharged Prisoners' Aid Societies in 1953, provision had been made for payment during the current year of grants of about £34,500.

PERSONALIA

APPOINTMENTS

Mr. Bryan Robins Ostler, M.A., has been appointed clerk and solicitor of Hinckley, Leics., urban district council, and will take up his duties towards the end of May. Mr. Ostler, who was admitted in 1937, is at present clerk and solicitor of Friern Barnet, Herts., urban district council. He formerly served with the Wandsworth metropolitan borough council and the Weston-super-Mare, Som., and Harrogate, Yorks., borough councils.

Mr. William Moss, who has been clerk to the Winchester city magistrates since 1944, has been appointed clerk to the Winchester county magistrates, and from February 1 he will combine the two posts. Mr. Moss succeeds Mr. A. C. Kingswell, solicitor, who has been clerk to the Winchester county magistrates since Mr. T. Woodham's death, but who has now resigned the clerkship. At present the offices of the Winchester city magistrates are in Southgate-street, and those of the Winchester county magistrates in City-road ; it is understood that both are being removed to Northgate Chambers, Jewry-street, Winchester.

Mr. Arthur Cust, LL.B. (Liverpool), deputy clerk to the justices of the Manchester county petty sessional division, has been appointed to succeed Mr. G. D. Yandell as clerk to the justices of Nottingham and Bingham petty sessional divisions.

Mr. Hugh J. A. Astley, M.A., LL.B., (Cantab.), senior assistant solicitor with the corporation of Oxford, has been appointed to the post of senior assistant solicitor to Bucks. county council, as from February 21, 1955. He has held his present post since December, 1950. Articled to Mr. W. H. Pollitt, LL.B., town clerk of St. Helens, Mr. Astley was appointed assistant solicitor to St. Helens county borough council in February, 1949, and in November, 1949, was appointed assistant solicitor to Manchester city council.

Mr. Peter L. Seville was appointed second assistant solicitor with Bucks. county council on December 1, 1954. He was articled in 1940 to Sir Charles des Forges, town clerk of Rotherham, Yorks., and in 1946 to Mr. J. S. Wall, the new town clerk of Rotherham. From 1949 until 1950, Mr. Seville was assistant solicitor with Rotherham county borough council, and from that year until taking up his new position was assistant solicitor with Bucks. county council.

Mr. Paul Smith, LL.B., was appointed assistant solicitor with Bucks. county council on December 28, 1954. Mr. Smith was articled to Mr. A. R. Tanfield from 1941 until 1945, and with Messrs. Stafford Clark & Co., from 1946 until 1949. From 1949 until 1950, Mr. Smith was assistant solicitor with Messrs. Tanfield & Co., and from 1950 until 1953 was legal assistant with the Ministry of Pensions. From 1953 until he took up his present position, Mr. Smith was assistant solicitor with Great Yarmouth county borough council.

Mr. John Towey, LL.B., has been appointed junior assistant solicitor with Blackburn, Lancs., corporation. Mr. Towey is 28 years of age and was admitted on January 11 this year, after gaining his B.A. degree with 1st Class Honours at Sheffield University. He served articles of clerkship from 1951 until 1954 with Mr. Philip S. Rennison, town clerk of Bolton, and is at present engaged as temporary assistant solicitor to Bolton corporation.

Mr. R. T. D. Williams, B.A., LL.B., the present second assistant solicitor at Wolverhampton, has been approved to succeed Mr. Meddings as senior assistant solicitor. Mr. Williams is 34, was admitted in October, 1949, and in the same year was appointed assistant solicitor in Wolverhampton.

Mr. J. R. Hooley, LL.B., has been appointed assistant solicitor to Salop county council to fill the vacancy caused by Mr. J. Price's acceptance of an appointment in Lancashire. Mr. Hooley, who is at present on the staff of Carlisle, Cumberland, city council, will take up his appointment towards the end of February.

Mr. George Colin Child, LL.B., A.C.C.S., at present assistant solicitor with Finchley, Middlesex, corporation, has been appointed junior assistant solicitor with Oxford corporation.

Mr. H. F. Jenkins, previously a clerk in the legal section of Hackney metropolitan borough council, has been appointed legal assistant in the town clerk's department.

Mr. David G. Hewlings, governor of an open borstal institution near Redditch, Worcestershire, has been appointed administrative officer to Hatfield and Welwyn Garden City, Hertfordshire, development corporation.

Mr. Cecil Morton Ritter, has been appointed a probation officer with Lancashire (No. 7) Combined Probation Area.

Superintendent Percy George Wilkes, head of Northwich, Cheshire police division for the past five years, is to move to Crewe and will be succeeded at Northwich by Superintendent John Henderson of Crewe.

Mr. Frank K. Mensa-Bonsu, an African, who has been articled for the last three years to the town clerk of Exeter (Mr. C. J. Newman) has become the first Gold Coast student in this country to qualify as a solicitor. He has achieved the distinction of passing the Law Society's examination with 2nd Class Honours. Mr. Mensa-Bonsu comes from Kumasi, on the Gold Coast, and it is intended that he shall return there as deputy town clerk.

RETIREMENTS

Mr. T. T. Thorpe, LL.B., L.A.M.T.P.I., who has been clerk to Potters Bar, Middlesex, urban district council, and its predecessor, South Mimms rural district council, for over 27 years, is retiring on February 14, and going into private practice in Chambers specializing in local government, particularly town planning.

Mr. Frank Bunn, chief constable of Stoke-on-Trent, is retiring in May after holding the position since 1936.

Mr. Leonard Garerd Hill is to retire at the end of February from the post of Norwich city coroner, which he has held since 1942. Mr. Hill was the elder son of Colonel S. G. Hill, who practised as a solicitor for over 60 years. He joined his father in the firm of S. Garerd Hill & Son, Norwich, in 1907 and has been in practice in the city ever since. Mr. Hill was admitted in 1907, after being articled in 1902. His appointment as city coroner, succeeding Mr. W. N. Ladell, followed a great deal of experience in this aspect of legal service. He was appointed deputy coroner in 1918, restoring the post to Mr. G. S. Stevens, when the latter returned from service in the first World War. In 1926 Mr. Hill was appointed assistant deputy coroner and conducted many inquests during Mr. Stevens' illness.

OBITUARY

SIR RHYS RHYS-WILLIAMS

We announce with regret the death at the age of 89 of Sir Rhys Rhys-Williams, Bt., D.S.O., Q.C.

The late Baronet was the son of Judge Gwelym Williams and was educated at Eton and Oriel College, Oxford.

He was called to the bar by the Inner Temple in 1890 and joined the South Wales Circuit, taking silk in 1913.

In World War I he saw distinguished service in the Grenadier and Welsh Guards, becoming a bomb-unit commander and being decorated with the D.S.O.

In 1918 he became Coalition-Liberal M.P. for the Banbury Division of Oxfordshire and was appointed Parliamentary Secretary to the Ministry of Transport. After his resignation of this appointment and subsequently his seat in Parliament, he became recorder of Cardiff in 1922.

He was also chairman of quarter sessions for the county of Glamorgan, having succeeded his father in that position in 1906.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Thursday, February 3

NEW TOWNS BILL, read 2a.

HOUSE OF COMMONS

Friday, February 4

RURAL WATER SUPPLIES AND SEWERAGE BILL, read 1a.

NOTICES

The next court of general quarter sessions for the borough of Shrewsbury, Salop, will be held on Thursday, March 17, at the Shirehall, Shrewsbury, at 11 *a.m.*

BOOKS AND PUBLICATIONS RECEIVED

Housing Repairs and Rents Act, 1954. Table of Permitted Increases and Notes thereon prepared by G. V. Corney, Clerk of the Council, Council Offices, Upper Green, Tettenhall, Staffs. Price 1*s.* 6*d.*

Report of 72nd Annual Meeting and Conference, September 17 and 18, 1954. Secretary, Frant L. Othick, Livingstone House, 42 Broadway, Westminster, S.W.1.

Ageing Men in the Labour Force. The problems of organizing older workers in the Building Industry. By F. Le Gros Clark, M.A., The Nuffield Foundation, Nuffield Lodge, Regents Park, London, N.W.1.

SEDUCTIO AD ABSURDAM—I

Proceedings for breach of promise of marriage, in this country, and still more in the matriarchal society of the United States, are sprinkled as thickly with forensic *clichés* as a Christmas pudding is with spices. The plaintiff's counsel is expected to set off fireworks of all the stock patterns, and press and public are rarely disappointed. " Heartbroken," " sorrowful," " desolate," " piteous," " downtrodden," " wilted "—these are some of the epithets applied most plentifully to strapping young women who have proved themselves as cynical and predatory in their man-hunting as a newly-fledged reporter in getting his teeth into a good story. Life for many of these victims of a rich man's wiles is a succession of visits to night-clubs, bottle-parties and those contorsionist and erotic dances that attract the bright young things between thirty and fifty who are grimly determined to have " a good time " and relive their lost and wasted youth. Hopping into bed, at four-thirty in the morning, with the companion of the moment is part of the " fun " ; and the male halfwit (if that fraction be not excessive) who frequents this kind of *demi-monde* deserves all that he eventually gets. Sooner or later he is entrapped into an apparent declaration which he regrets when he is sober ; the inevitable solicitor's letter is followed by a writ, and in due course the jury's verdict is returned before a " fashionable " audience. It is an amusing and stimulating way of making a living, and the resultant publicity is as gratifying as that which attends the publisher of a " daring " book who has successfully defended proceedings for uttering an obscene libel.

There are, exceptionally, meritorious cases ; but by and large the action for breach of promise of marriage is one of the anachronisms of our law. If it ever had merits of any kind, they were based upon the once subservient position of women in society. Up to the first decade of the twentieth century it was unusual for young women of breeding to undergo any kind of training that would enable them to earn their own living ; " getting married " was the sole *desideratum* of those who sought escape from tyrannical parents, the bondage of domestic labour and the prospect of a permanent and ineffective spinsterhood. It was seldom a case of choosing a husband, but rather of accepting gratefully the best of a bad bargain, wilfully shutting their eyes to the neglect, the deceptions and the unhappiness in store. The divorce laws were primitive and (being the product of an all-male Parliament) heavily weighted in favour of the husband ; adultery on his part would not secure the wife a decree unless coupled with desertion or cruelty. Girls who had been betrothed and jilted were in parlous case. They had irretrievably lost caste ; their stock in the marriage-market had fallen to well below par ; a miserably cloistered youth and a lonely and poverty-stricken middle-age awaited them. If they had been seduced under the promise of marriage and then left in the lurch, their future was terrible indeed. The appalling alternatives of those days were put before the public, soon after the turn of the century, in *Mrs. Warren's Profession*—meat highly-flavoured for Edwardian stomachs, but a seasonable change from the insipid fare provided by Shaw's contemporaries.

In those days the deceived and deserted female could scarcely be blamed for seeking in the courts a pecuniary redress for her wrongs. Special damage preponderated and there was nothing shocking to the moral sense in the award. Nowadays the situation is very different ; while there may still be cases of excessive hardship on the one side and excessive depravity on the other, the victim of a broken engagement is seldom appreciably worse off than before. And often the " engagement " is based on the flimsiest of evidence ; large numbers of such cases amount to little less than legalized blackmail, to the prosecution of which a good many practitioners, on principle, refuse to lend their services.

It is strange to reflect that what has now become a somewhat disreputable form of proceedings had its origin in an institution which once enjoyed the protection of the canon law. The ancient ceremony of betrothal—*sponsalia de futuro*—was of great significance in the eyes of the Church ; (there was at one time another form—*sponsalia de praesenti*—which was a marriage in all but name, until its abolition by the Council of Trent in 1563). Betrothal, properly so called, could be entered into by females between seven and twelve and males between seven and fourteen years of age. This was in line with the legal minimum age for marriage which, until 1929, remained at twelve for girls and fourteen for boys. The fulfilment of the marriage-contract —the betrothal itself, which might have been undertaken at the tender age of seven—was enforced in the ecclesiastical courts by a decree of what we should now call specific performance—an order that the promised marriage be celebrated *in facie ecclasiae* ; refusal and disobedience to the decree was at one time punishable by excommunication.

Lord Hardwicke's Act of 1753 (26 Geo. II, cap. 33) abolished this jurisdiction, enacting that " in no case whatsoever shall any suit or proceeding be had in any ecclesiastical court in order to compel a celebration *in facie ecclasiae* by reason of any contract of matrimony whatsoever, whether *per verba de praesenti* or *per verba de futuro*." Henceforth proceedings arising out of a contract to marry were relegated to the common law courts to be dealt with like the breach of any other contract. As everybody knows, the remedy lies only in damages. He would be a bold man who today advocated either of the other kinds of redress known to the law—injunction (to forbid the unwilling party to marry anybody else) or specific performance—to take the reluctant spouse-to-be by the scruff of his neck and stand over him, at the altar, until the deed was done. A.L.P.

(To be concluded.)

ADDITIONS TO COMMISSIONS

MERIONETH COUNTY

John Ahilud Baines, Tynewydd, Carrog.
Gwilym Davies, 143, Manod Road, Blaenau Ffestiniog.
David Jones Ellis, Rhosigor Farm, Talsarnau.
Mrs. Catherine Evans, The Rectory, Pennal.
Mrs. Hannah Harry, Y Wern, Harlech.
Edward Jarret Jones, 4, Sun Street, Ffestiniog.
John Edward Jones, Bodeuron, Pensarn Road, Bala.
Thomas Jones, Bro Aran, Llanuwchllyn.
Miss Ethel Margaret Morgan, Man Siriol, Dolgelley.
Mrs. Amelia Morris, Glanywerydd Flat, Barmouth.
Mrs. Jane Jones Pugh, Bryn, Bala.
Alun Morris Roberts, Maesybryn, Minffordd, Penrhyndeudraeth.
William Roberts, Cynythog Ganol, Llidiardau, Bala.
Stephen Tudor, Gwerclas, Corwen.
Miss Elizabeth Aethwy Williams, Tegfan, Wynn Road, Blaenau Ffestiniog.
Evan Brynmor Williams, Meirion House, Llanbedr.
Mrs. Gwenith Gwyn Williams, Awelon, Bala.
Gwilym Thomas Williams, Coed Mawr, Llanfechreth.

WILTS COUNTY

Major Eustace Charles Ashton, King's Hall, Milton, Pewsey.
William Anthony Brown, The Manor, Aldbourne.
Tom Davies, 82, East End Avenue, Warminster.
Sydney George Farmer, c/o Messrs. Rich & Beak, High Street, Malmesbury.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Contract—*Pawnbroker—Article stolen.*

I should be interested to have your view and decision regarding the Pawnbrokers Act. It appears that if a pledge is lost or damaged by fire, the pawnbroker has certain responsibilities in law, but there does not seem to be any provision for compensation to the owner of the pawned article if the pledge is stolen from the pawnbroker during the time it is in his custody. Any authority on this matter would be greatly appreciated. SPAWN.

Answer.

As no special provision is made in the Pawnbrokers Act, 1872, for such a case, and as the loss of goods pawned takes the case out of s. 31 of the Act (*Allworthy and Walker* v. *Clayton* (1907) 71 J.P. 20) it would appear that the pawnbroker is not liable unless he has been negligent, in which case an action could be brought against him in the county court.

2.—Criminal Law—*Costs of defence—Obligation of local authority.*

Section 1 (1) of the Costs in Criminal Cases Act, 1952, empowers a court of assize or quarter sessions to order the payment, out of local funds, of the costs of the defence, and subs. (2) enacts that the costs so payable shall be such sums as appear to the court reasonably sufficient to compensate the accused for the expense properly incurred by him in carrying on the defence.

Do you agree that this section gives power to a court to order the payment of a fixed sum notwithstanding the provisions of subs. (5)? If the court orders the payment of a sum under subs. (2) which is *prima facie* excessive what action, if any, can a local authority take to question the amount of the order? JECTA.

Answer.

It is the duty of the local authority, on sight of the order, to pay the sum ordered by the court (s. 11 (1)). There appears to be no discretion to be exercised by the local authority. If a sum were obviously excessive, as in the case of an allowance to a witness exceeding the maximum prescribed by the regulation, no doubt the local authority could refuse to pay more than the maximum and refer the matter to the court.

We should like rather more information as to what is suggested in the question. As we understand the practice, the court orders payment of costs of the defence out of local funds, and then the proper officer ascertains the amount by taxing the various items. The expenses of witnesses are regulated by the Witnesses Allowances Regulations, 1948, and the other costs are discretionary. The expenses of witnesses are paid to them direct; the other costs incurred by the defence are paid to the defendant or his representative.

Before expressing any further opinions, we should be glad to know whether this is what happened in the case mentioned in the question, and if not what was the procedure. Did the court, without any kind of taxation, order the payment of a lump sum, including, or excluding, expenses of witnesses?

3.—Education—*School attendance—Adult and juvenile courts—Jurisdiction.*

A child attends school irregularly and the parent is brought before the adult court under s. 39 of the Education Act, 1944. The magistrates fine the parent and direct that the child be brought before the juvenile court under s. 40. The juvenile court magistrates make an order of supervision to be operated by the probation officer. The child continues to attend irregularly.

It is appreciated that action can be taken by the probation officer for a breach of the supervision order, but it is established that the whole fault lies with the parent.

(*a*) Can the parent again be proceeded against under s. 39 by the education authority for not carrying out his duties, bearing in mind that the supervision order is already in existence?

(*b*) Once an order of supervision is made, is the local education authority precluded from taking further proceedings either in the adult or the juvenile courts?

(*c*) What action can be taken by the magistrates once a child is "directed" to the juvenile court? DEOLS.

Answer.

(*a*) Yes, in our opinion. The renewed failure to attend is a new offence against s. 39.

(*b*) No. The most effective plan may be for the probation officer to bring the child back to the juvenile court under s. 66 of the Children and Young Persons Act, 1933.

(*c*) The order made in terms of s. 62 of the Children and Young Persons Act, 1933, as applied by s. 40 (3) or (3A) can still be enforced. A fresh order can be made if there is a fresh offence, and it may be the duty of the court to consider (*a*) (*b*) or (*c*) in s. 62, if the repetition of the offence shows that (*d*) has been ineffective. If however this part of the query is directed to an earlier stage, the answer is that the local education authority have, under s. 40, a duty to see that the child comes before the juvenile court in accordance with the direction.

4.—Justices—*Ex-officio—Right to attend and vote at annual meeting.*

The Justices of the Peace (Size and Chairmanship of Bench) Rules, 1950, as amended by S.I. 1951, No. 1982, requires the justices for each petty sessions area to elect a chairman and one or more deputy chairmen at their annual meeting in the month of October each year. I am not clear as to the position with regard to an *ex-officio* justice who holds office by virtue of his being chairman of the local authority.

I shall be glad to have your opinion on the following points:

1. Should a notice be sent to an *ex-officio* justice to attend the annual meeting of the justices, and

2. Is an *ex-officio* justice entitled to vote at the election of the chairman and deputy chairmen. SORRO.

Answer.

Generally as to *ex-officio* justices, *see* question and answer at 117 J.P.N. 95.

The law makes no distinction in these matters between *ex-officio* and other justices. Therefore our answers to both questions are in the affirmative.

5.—Landlord and Tenant—*Housing (Rural Workers) Acts—Housing Repairs and Rents Act*, 1954.

Under s. 3 of the Housing (Rural Workers) Act, 1926, the maximum permitted rent of cottages the subject of grants is fixed for a period of 20 years. If further works are carried out during that period, s. 45 of the Housing Act, 1949, permits increases. It is noted that s. 23 (3) (*b*) of the Housing Repairs and Rents Act, 1954, excludes houses which have been the subject of improvement grants under the Housing Act, 1949, but no exclusion appears to be made of cottages which have been the subject of grants under the Housing (Rural Workers) Acts.

1. I shall be glad of your opinion whether s. 23 of the Housing Repairs and Rents Act, 1954, now permits further increases to be made in those rents without reference to the authority responsible for the administration of the Housing (Rural Workers) Acts.

2. Assuming the answer to 1 is in the affirmative, how far is the authority responsible for the administration of the Housing (Rural Workers) Acts concerned to check that increases under the 1954 Act are proper increases? D.H.R.W.

Answer.

1. Yes, in our opinion.
2. Not at all.

6.—Licensing—*Appointment of time and place for holding general annual licensing meeting—Whether meeting may be private—Announcement of decision.*

Under the Licensing Act, 1953, sch. 2, part I, the licensing justices must hold a meeting not less than 21 days beforehand in order to appoint the time and place of the annual general licensing meeting.

May this preliminary meeting be held in a private room (not in the petty sessional court house) in private and not on an ordinary court day without notice to anyone except the licensing justices themselves? Is it necessary for them to announce their decision in court or is it sufficient for the clerk to send out the notices prescribed in para. 7 of this part of the schedule? OROUC.

Answer.

The meeting may be held in private: not necessarily in the court house. No notice of the meeting need be given except to the licensing justices. It is not necessary that the date and time of the meeting shall be announced in open court. Part I of the sch. 1 to the Licensing Act, 1953, is a complete code in the matter and nothing that this code does not specifically require need be done.

7.—Licensing—*Club—Whether club may be registered so as to operate only in summer.*

The owners of a residential hotel wish to form a proprietary club, which will be registered with the clerk to the justices. Two rooms will be set aside as club rooms. There will be 25 founder members, who will be local residents, and other local residents can, of course, join later. In the main, however, members will consist of guests staying at the hotel during the summer season. The hotel is closed during the winter months, and it is not desired to keep the two club rooms open during those months.

Can a rule be inserted to the effect that the club will only be open and available to members during, say, the months of May to September inclusive ? If such a rule is not permissible, are the proprietors obliged to keep the club open throughout the year ?

It is believed that there are registered clubs at certain holiday camps which are only open during the summer season and that some such rule must be in operation in those cases. ORUAY.

Answer.

There is nothing in licensing law to prevent a registered club being closed for part of the year.

8.—Local Government—*Interest of members in contracts—Indirect interest.*

Section 76 of the Local Government Act, 1933 (as amended by the Local Government Act, 1948), deals with the disability of members of local authorities for voting on account of interest in contracts, &c., and subs. (2) expressly defines certain interests which are to be treated as indirect pecuniary interests. Will you please advise whether you consider subs. (2) has the effect of limiting an indirect pecuniary interest to the interests mentioned therein or whether there can be other forms of indirect interest, as in fact do often arise. BRYDOR.

Answer.

We do not regard subs. (2) as exhaustive.

9.—Periodical Payments—*Complaint for arrears—Non-appearance of defendant—Warrant after summons—Who may apply.*

In the court where I am now the clerk it has always been the practice in appropriate cases where a defendant does not appear in answer to a summons for the information or complaint to be substantiated on oath by the actual informant or complainant when a warrant is applied for.

It is now contended by the legal department of the corporation that where summonses for arrears under contribution orders issued on complaints made by the town clerk are disobeyed it is quite proper for some person other than the town clerk to substantiate the complaint on oath when asking for a warrant to be issued.

The town clerk does not appear in court but is represented by a solicitor on his staff who suggests that although the summonses are issued on the complaint of the town clerk, that official is only a nominal complainant.

The granting of a warrant for the arrest of a person is never to be undertaken lightly and I shall be glad of your opinion as to the correct procedure. TROMB.

Answer.

Complaint may be made by some authorized person on behalf of the complainant, Magistrates' Courts Rules, 1952, r. 4 (2), and a case of this kind can proceed in the absence of the complainant, Magistrates' Courts Act, 1952, s. 74 (5). We see no objection to the proposed procedure. We agree about the importance of the issue of a warrant, but we think it is sufficient if a person who can give proof of the arrears substantiates the complaint on oath, with the authority of the complainant.

10.—Public Health Act, 1936, s. 287—*Entry on land outside district—Form of authorization.*

My council are proposing to construct a new sewage disposal works in the adjacent rural district. It is necessary to obtain entry to the land concerned in order to obtain preliminary information regarding the levels, etc. The owner of the land has refused permission to the council's engineer and surveyor to enter for this purpose. I have considered s. 287 of the Public Health Act, 1936, in this connexion.

Section 343 of the Act defines " functions " as including powers and duties.

Section 15 of the Act states : " (1) A local authority may within their district and also, subject to the provisions of the next succeeding section, without their district . . . (ii) construct sewage disposal works on any land acquired, or lawfully appropriated, for the purpose; . . . "

Apart from the general question whether the powers of s. 287 are available to an authority outside its own district, it does not appear to me that the powers are available in the present case in regard to the proposal to construct the works since s. 15 (1) (ii) refers to land already acquired or appropriated by the council. The only remaining question is whether the powers may be exercised in relation to any proposal to acquire the land.

I am aware of the provisions of s. 84 of the Lands Clauses Consolidation Act, 1845, which enables entry to be made upon notice after the service of notice to treat but this is not helpful at this juncture. Although an outline application for planning permission has been made to the local planning authority I do not consider that the powers contained in s. 103 of the Town and Country Planning Act, 1947, are available to my council in the present case.

Your opinion is therefore sought as to :

1. (*a*) Whether the present purpose for which the council require entry is a purpose within s. 287 of the Public Health Act, 1936 ?

(*b*) If so, would this permit the engineer to make bore holes in addition to merely surveying the site ?

2. If not,

(*a*) Do you agree that s. 103 of the Town and Country Planning Act, 1947, is also not available ?

(*b*) Are you aware of any other powers of entry available to the council for the present purpose ?

3. If s. 287 is available may the council give a general authority to the engineer to enter this and other alternative sites for the same purpose ? ATONA.

Answer.

1. (*a*) Yes, in our opinion, s. 287 is not limited to the council's district, or to a case where they could purchase compulsorily. They can in our opinion enter and examine the land superficially, for the purpose of considering whether it is worth their while to make an offer.

(*b*) No, in our opinion. When Parliament intends to give power to break the surface, or otherwise do physical injury, it says so.

2. We agree, and cannot refer to other powers.

3. The " surveyor " seems not to need authorization beyond that given by the definition of " authorized officer " in s. 343. If, as will often happen, the actual visit to property is to be paid by an assistant, he should be authorized. Where it is known that he may be challenged, we advise the issue of specific written authority naming the property in question, even if the " surveyor " is to visit in person. This is not often called for, so not much trouble is involved. A formal document mentioning Blackacre by name is less likely to be queried by the occupier of Blackacre than is a general document, and will, if recourse has to be had to the magistrates, possibly save argument at that stage.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. *(Contd.)*

CITY OF BRADFORD

Justices' Clerk's Office

Appointment of Third Assistant

APPLICATIONS are invited for the appointment of Third Assistant in the office of the Clerk to the Justices for this City.

Applicants must have a good general experience of magisterial law and practice and be able, without supervision, to take a court daily (four courts sit daily).

The salary will be within the range £675 × £30—£825 and will be fixed according to qualifications and experience. This will be subject to adjustment so soon as an Award is made in respect of Justices' Clerk's Assistants.

The appointment will be superannuable and will be subject to one month's notice on either side.

The successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with copies of three recent testimonials, must reach the undersigned not later than February 28, 1955

FRANK OWENS,
Clerk to the Magistrates' Courts Committee.

The Town Hall, Bradford.

COUNTY BOROUGH OF GLOUCESTER

ASSISTANT SOLICITOR required. Salary in accordance with current National Joint Council scale, commencing £690 or £780 dependent upon practical legal experience. Conveyancing essential. Applications by February 16, 1955, to Town Clerk, Guildhall, Gloucester, with references.

HAMPSHIRE MAGISTRATES' COURTS COMMITTEE

Odiham Petty Sessional Division

APPLICATIONS are invited for the appointment of a male assistant in the Justices' Clerk's office at Aldershot. Previous experience in a justices' clerk's or private solicitor's office desirable. Applicants must be competent typists, shorthand desirable. The post is superannuable and present salary is according to age up to a maximum of £475 a year at 28 years.

Applications in own handwriting, stating age, qualifications and experience, with the names and addresses of three referees, to be sent to the Clerk to the Justices, 71 High Street, Aldershot, not later than February 19, 1955.

G. A. WHEATLEY,
Clerk of the Committee.

The Castle,
Winchester.

BOROUGH OF WATFORD

Assistant Solicitor

APPLICATIONS are invited for this post on new A.P.T. Grade VI/VII (£895—£1,100) depending upon qualifications and experience. The scale is at present under review.

Application forms and further particulars obtainable from me. Closing date February 17, 1955.

GORDON H. HALL,
Town Clerk.

Town Hall,
Watford.

LANCASHIRE No. 6 COMBINED PROBATION AREA

Apointment of Female Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Female Probation Officer.

Applicants must not be less than 23 nor more than 40 years of age except in the case of a serving Probation Officer.

The appointment will be subject to the Probation Rules, 1949 to 1954, and the salary will be according to the scale prescribed by those rules.

The successful applicant will be required to pass a medical examination for the purpose of superannuation.

Applications, stating age, present position, qualifications, and experience, together with not more than two recent testimonials, and stating whether able or willing to learn to drive a motor car, must reach the undersigned not later than Saturday, February 26, 1955.

J. FREER,
Secretary to the Probation Committee.

The Butts,
Rochdale, Lancs.

COUNTY BOROUGH OF BARNSLEY

Appointment of Assistant Solicitor

APPLICATIONS are invited for the position of Assistant Solicitor in the Town Clerk's Department at a salary in accordance with the following scale—£690 × £30—£900. A Solicitor who has had not less than two years' legal experience from the date of admission will receive a salary of not less than £780 per annum.

Preference will be given to those applicants who have had a good experience in advocacy.

The appointment will be subject to the Scheme of Conditions of Service for A.P.T. & C. staff; such further conditions of employment as may be imposed by the Corporation from time to time; and to the Local Government Superannuation Acts, for which purpose the successful candidate will be required to pass a medical examination.

Applications, giving age, date of admission, particulars of qualifications and experience, together with the names of three referees, should reach the Town Clerk, Town Hall, Barnsley, not later than February 19, 1955.

Canvassing will disqualify.

A. E. GILFILLAN,
Town Clerk.

Town Hall, Barnsley.

BOROUGH OF SUTTON COLDFIELD

Assistant Solicitor

APPLICATIONS are invited for the above appointment in accordance with National Joint Council's Scale of Salaries, i.e., £675—£825 and from April 1, 1955, £690—£900 according to experience. Previous experience with a local authority not essential. Superannuation Scheme; medical examination; housing accommodation is available. Applications, stating age, qualifications and experience together with names of two referees and endorsed "Assistant Solicitor" must reach me before noon on February 19, 1955.

R. WALSH,
Town Clerk.

Council House,
Sutton Coldfield.

WARWICKSHIRE COMBINED AREA PROBATION COMMITTEE

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time male Probation Officer. Applicants must be not less than 23 nor more than 40 years of age, except in the case of whole-time serving officers. The appointment will be subject to the Probation Rules, 1951–54, and the salary in accordance with the prescribed scales. The successful applicant will be required to pass a medical examination and to reside in the Nuneaton area.

Applications, on forms obtainable from the undersigned, must be received not later than Wednesday, March 9, 1955.

L. EDGAR STEPHENS,
Secretary of the Committee.

Shire Hall,
Warwick.
February 2, 1955.

FRIERN BARNET URBAN DISTRICT COUNCIL

Clerk and Solicitor

APPLICATIONS for this appointment are invited from legally qualified persons with local government experience at a commencing salary of £1,465 rising to £1,675 per annum. Salary Scale and Conditions of Service in accordance with Recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks. Appointment subject to medical examination and to three months' notice on either side.

Applications, with names and addresses of two referees, to reach the undersigned not later than February 28, 1955.

B. R. OSTLER,
Clerk and Solicitor.

Town Hall,
Friern Barnet, N.11.

BOROUGH OF GILLINGHAM

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with considerable experience in Municipal law and practice for the above appointment.

Salary £1,350 per annum, rising by annual increments of £50 to £1,550 per annum. The terms of appointment will be in accordance with the Recommendations of the Joint Negotiating Committee for Certain Chief and Other Officers, and the successful applicant will be required to pass a medical examination.

Applications, stating age, full details of experience and qualifications, and the names and addresses of three persons to whom reference can be made, are to be sent to me not later than Tuesday, March 1, 1955, together with 12 copies thereof. Applicants selected for interview may be required to supply 20 additional copies of their applications.

Canvassing, directly or indirectly, will disqualify.

FRANK HILL,
Town Clerk.

Municipal Buildings,
Gillingham, Kent.
February 11, 1955.

KESTEVEN (LINCOLNSHIRE) MAGISTRATES' COURTS COMMITTEE

Appointment of Clerk to the Justices, Sleaford Division

APPLICATIONS are invited from persons qualified under s. 20 of the Justices of the Peace Act, 1949, for the part-time appointment of Clerk to the Justices for the Sleaford Petty Sessional Division. Salary £650×£50—£800. The appointment will be superannuable and subject to a medical examination. Clerical assistance will be provided.

Full details of the appointment can be obtained from the undersigned to whom applications, giving age and qualifications and the names of two referees, should be sent so as to be received not later than February 25, 1955.

J. E. BLOW,
Clerk of the Committee.

County Offices,
Sleaford, Lincs.
February 7, 1955.

COUNTY OF THE ISLE OF ELY

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary of £690×£30—£900 per annum, commencing salary according to experience.

Forms of application and further particulars obtainable from the undersigned. Closing date February 26, 1955.

R. F. G. THURLOW,
Clerk of the County Council.

County Hall,
March, Cambs.

COUNTY BOROUGH OF DONCASTER

APPLICATIONS are invited for the appointment of First Assistant in the office of the Clerk to the Justices for this County Borough.

Applicants should have a considerable knowledge of magisterial law and to be able, without supervision, to take a Court, and to take depositions on a typewriter.

The salary will be within the range £560—£640 and will be fixed according to experience. This will be subject to adjustment when an award is made in respect of Justices' Clerk's Assistants.

The appointment will be superannuable and subject to one month's notice on either side.

Applications, stating present position, age and experience, together with copies of two recent testimonials, must reach the undersigned not later than March 7, 1955.

M. PREECE,
Clerk to the Magistrates' Courts Committee.

The Guildhall,
Doncaster.

INQUIRIES

DURHAM COUNTY COMBINED AREA PROBATION COMMITTEE

Appointment of Female Probation Officer

APPLICATIONS are invited for the appointment of whole-time Female Probation Officer for the Durham County Combined Probation Area. Applicants must not be less than 23 years or more than 40 years of age except in the case of serving officers.

The appointment and salary will be in accordance with the Probation Rules and the salary will be subject to superannuation deductions. The person appointed to this post will be required to pass a medical examination.

Applications, stating age, education, qualifications and experience, together with the names and addresses of two referees, should be received by the undersigned not later than February 26, 1955.

J. K. HOPE,
Secretary to the
Combined Probation Committee.

February 8, 1955.

APPOINTMENTS

LONDON MAGISTRATES' COURTS Committee invite applications for the post of GENERAL CLERK (MALE) at the Hampstead Magistrates' Court. Previous experience in Justices' Clerk's Office not necessary but shorthand and typewriting essential. Salary £416—£597 per annum, according to age and experience. Appointment superannuable and subject to medical examination. Written applications with copies of two testimonials to : Clerk to the Justices, Downshire Hill, Hampstead, N.W. 3.

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BIRMINGHAM.—J. ALFRED FROGGATT & SON, F.A.I., Chartered Auctioneers, Valuers & Estate Agents, Unity Buildings, 14 Temple Street, Birmingham. Tel. MIDland 6811/2.

COUNTY OF RADNOR

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor at a salary in accordance with the current National Joint Council Scale dependent upon experience.

Conveyancing essential and local government experience will be an advantage. The post is superannuable.

Applications, stating age, qualifications and experience, and the names and addresses of two persons to whom reference may be made, must reach the undersigned not later than February 25, 1955.

PHILIP PARKER,
Clerk of the Council.

County Hall,
Llandrindod Wells.

LANCASHIRE MAGISTRATES' COURTS COMMITTEE

Rossendale Petty Sessional Division

APPLICATIONS are invited for the appointment of whole-time First Assistant in the office of the part-time Clerk to the Justices of the above Division, salary scale £600 × £25—£725. Superannuable and subject to medical examination. The Division has a population of 57,480 and Courts are held at Bacup, Haslingden and Rawtenstall. Modern central offices at Rawtenstall.

Applications to be sent to the undersigned, together with the names of two referees, not later than February 21, 1955.

G. A. PRATT,
Clerk to the Justices.

Justices' Clerk's Office,
Oakley Road, Rawtenstall.

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